

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5738 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHRI MAHOTAJI KHODAJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR BP MUNSHI for Petitioner

MR. NIGAM SHUKLA, Addl. G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/10/96

ORAL JUDGEMENT

Mr. B.P. Munshi, Advocate, for the petitioner.
Mr. Nigam Shukla, Addl. Government Pleader for the respondents. This Special Civil Application is directed against the detention order dated 20.4.1996 passed by the District Magistrate, Gandhinagar, detaining the petitioner under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985. The detention order

was executed on 21.4.1996 and since then the petitioner is under detention lodged at District Central Prison, Baroda.

2. This Special Civil Application was filed on 2.8.1996 and on 5.8.1996 rule returnable for 2.9.1996 was issued. So far neither any reply has been filed nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that number of criminal cases i.e. 19 criminal cases were registered against the petitioner at Police Station, Adalaj, during the period 1992 to 1996. The last offence being dated 31.3.1996. Out of these cases, certain cases were pending trial before the court and in certain cases the police investigation was going on at the time when the detention order was passed. The detaining authority has noted the allegations against the petitioner in these criminal cases and has found that the petitioner was engaged in the unauthorised business of manufacturing and sale of country liquor. Five witnesses have also deposed against the petitioner's activity of unauthorised liquor business and beating them who did not co-operate with him in this business. The detaining authority has found that the petitioner is a headstrong person and was engaged in the bootlegging activities and anti-social activities. On these grounds the detention order has been passed.

4. The detention order has been challenged on several grounds but at the time of argument, the learned counsel for the petitioner has confined his argument to ground No. 6(H) . By way of amendment in this petition, it has been stated that the petitioner was not supplied with the copy of bail application and bail order which could have had an impact on petitioner's right for the purpose of making a representation under Article 22(5) of the Constitution of India.

5. In the facts and circumstances of the case, the copies of the bail application and the bail order which have not been supplied to the petitioner were vital and relevant documents.

6. The aforesaid factual position has not been controverted in any manner by the respondents and this court has considered in earlier decision that such documents are vital and relevant to the right of making effective representation under Article 22(5) of the Constitution of India. In this view of the matter, the impugned detention order cannot be allowed to continue as a result of violation of the petitioner's constitutional

rights under Article 22(5) of the Constitution of India.

7. Accordingly, this Special Civil Application is allowed. The impugned detention order dated 20.4.1996 passed by the District Magistrate, Gandhinagar, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty, if not required in any other case. Rule is made absolute.

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